

MDL

EXHIBIT 9

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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11 IN AND FOR THE COUNTY OF MARICOPA

12 ROBERT J. SWANSTON, individually and on) CV2002-004988
13 behalf of himself and all others similarly situated,)
14 Plaintiff,)
15 vs.) ORDER DISMISSING CERTAIN
16 TAP PHARMACEUTICAL PRODUCTS, INC.;) CLAIMS AND DEFENDANTS
et al.,) WITHOUT PREJUDICE
17 Defendants.) (Assigned to the Honorable Janet E.
18) Barton)

19 THIS MATTER having been opened to the Court by The Haviland Law Firm, LLC
20 and Jennings, Haug & Cunningham, Counsel for Plaintiff and the Class, on Plaintiff's
21 Motion to Dismiss Without Prejudice Conflicting Class Claims as to Defendants overlapping
22 those asserted in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, CA No.
23 01-12257-PBS, MDL No. 1456 (D. Mass.) ("MDL 1456");

24 On this ___ day of December, 2007,

25 It is hereby ORDERED that Plaintiff's Motion to Dismiss Without Prejudice
26 Conflicting Class Claims is GRANTED;

1 **IT IS FURTHER ORDERED** that the pending class claims against the following
2 defendants are dismissed without prejudice pursuant to Rule 41 of Arizona Rules of Civil
3 Procedure to the extent the claims asserted in this action involve the same drugs as are at
4 issue in MDL 1456: Abbott Laboratories; Amgen Inc.; Zeneca, Inc.; AstraZeneca
5 Pharmaceuticals L.P.; Aventis Pharmaceuticals Inc.; Hoechst Marion Roussel, Inc.; ZLB
6 Behring, L.L.C. (f/k/a Aventis Behring L.L.C.); Baxter International Inc.; Baxter Healthcare
7 Corporation; Bayer Corporation; Bristol-Myers Squibb Co.; Oncology Therapeutics Network
8 Corp.; Apothecon, Inc.; Dey, Inc.; Fujisawa Healthcare, Inc.; Fujisawa USA, Inc.; Immunex
9 Corporation; Johnson & Johnson; Centocor, Inc.; Ortho Biotech Products, L.P.; Pharmacia
10 Corporation; Pharmacia & Upjohn LLC, f/k/a Pharmacia & Upjohn, Inc.; Monsanto
11 Company; Schering-Plough Corporation; Warrick Pharmaceuticals Corporation; Sicor, Inc.;
12 Gensia, Inc., and Gensia Sicor Pharmaceuticals, Inc.;

13 **IT IS FURTHER ORDERED** that within fourteen (14) days of the entry of this
14 Order, Plaintiff shall submit to the Court a listing of the drugs of the above-listed Defendants
15 that are at issue in MDL 1456, the claims for which drugs Plaintiff has agreed to dismiss
16 without prejudice from this case. Such list shall be appended to this Order to make clear on
17 the record the extent to which Plaintiff's claims have been dismissed without prejudice;

18 **IT IS FURTHER ORDERED** that the Plaintiffs' claims against the following
19 Defendants (who are not Defendants in MDL 1456) are dismissed in their entirety, without
20 prejudice: Ethicon Endo-Surgery, Indigo Medical Inc., Christopher Coleman, Michael T.
21 Gendelman, Eddy James Hack, Scott Hidalgo, and David Jett.; and

22 **IT IS FURTHER ORDERED** that, by this dismissal, (1) defendants do not waive or
23 release any defenses or arguments, including but not limited to, any statute of limitations
24 and/or repose defenses, which could have been asserted prior to the effective date of the
25 Order granting dismissal, (2) any and all applicable statutes of limitations and/or repose are,
26 from the effective date of the Order granting dismissal and for the pendency of MDL 1456,

1 tolled, and (3) the reinstatement of any Defendant to this action will not trigger a right of
2 removal to federal court.

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The Honorable Janet E. Barton

CERTIFICATE OF MAILING

I hereby certify that, the foregoing ORDER DISMISSING CERTAIN CLAIMS AND DEFENDANTS WITHOUT PREJUDICE was duly lodged and served this date, December 10th 2007, on all parties, via Lexis/Nexis.

| s/K. Cecil

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